

M E M O R A N D U M

DATE: December 2, 2009

TO: Ray Giometti, Chair
Members of the Renton Planning Commission

FROM: Erika Conkling, AICP, Senior Planner
David Sherrard, AICP, Parametrix

SUBJECT: **Suggested Topics for Planning Commission Review of the
Draft Shoreline Master Program**

1. Constitutional Issues

- a. Does the regulation or action result in a permanent or temporary physical occupation of private property?
- b. Does the regulation or action deprive the owner of all economically viable uses of the property?
- c. Does the regulation or action deny or substantially diminish a fundamental attribute of property ownership?
- d. Does the regulation or action require a property owner to dedicate a portion of property or to grant an easement?
- e. Does the regulatory action have a severe impact on the landowner's economic interest?

References: Washington Attorney General, Advisory Memorandum: Avoiding Unconstitutional Takings of Private Property

[http://www.atg.wa.gov/uploadedFiles/Home/About_the_Office/Takings/2006%20AGO%20Takings%20Guidance\(1\).pdf](http://www.atg.wa.gov/uploadedFiles/Home/About_the_Office/Takings/2006%20AGO%20Takings%20Guidance(1).pdf)

(Note: this has also been provided by Mr. Martin in his comments, as Exhibit 6, which is included on the CD enclosed within the binder of materials.)

2. No Net Loss

WAC 173-26-186 governing principles (8):

- a. Inventory-Characterization - Local government is guided in its review and amendment of local master programs so that it uses a process that identifies, inventories, and ensures meaningful understanding of current and potential ecological functions provided by affected shorelines.
- b. Local master programs shall include policies and regulations designed to achieve no net loss of those ecological functions.

- c. For counties and cities containing any shorelines with impaired ecological functions, master programs shall include goals and policies that provide for restoration of such impaired ecological functions.
- d. Local master programs shall evaluate and consider cumulative impacts of reasonably foreseeable future development on shoreline ecological functions and other shoreline functions fostered by the policy goals of the act. To ensure no net loss of ecological functions and protection of other shoreline functions and/or uses, master programs shall contain policies, programs, and regulations that address adverse cumulative impacts and fairly allocate the burden of addressing cumulative impacts among development opportunities.

Relevant SMP provisions

- i. 4-3-090.E.4 Environmental Effects
- ii. 4-3-090.E.9 Standards for Density, Setbacks and Height
- iii. 4.3-090.F Specific Use Provisions
- iv. 4-3-090 G. Shoreline Modification

References: Memo November 12, 2009 Overview of Comments Received
Overview Memo of October 9, 2009
October 23, 2008 Tech Memo - Code Overview item 5
Draft Cumulative Effects Analysis, October 2009

3. Critical Areas

RCW 90.58.058(4) The department shall approve the segment of a master program relating to critical areas ...if the segment provides a level of protection of critical areas at least equal to that provided by the local government's critical areas ordinances adopted and thereafter amended pursuant to RCW 36.70A.060(2).

Relevant SMP provisions:

- i. 4-3-090.E.4.c. Critical Areas
- ii. 4-3-090.E.9 Standards for Density, Setbacks and Height
- iii. 4.3-090.F.G.1 Vegetation Conservation
- iv. Critical areas regulations provide minimum buffers for Class 2 streams of 100 feet at RMC 4-3-050-L.5.a.(i)(a)
- v. 4-3-090.G.1 e Alternative Vegetation Buffer Widths and Setbacks for Existing Single-Family Lots factions is a "reasonable use" provision

References: Memo November 12, 2009 Overview of Comments Received
Overview Memo of October 9, 2009
October 23, 2008 Tech Memo – Code Overview, Item 4

4. Use Preference

- a. The statute in RCW 90.58.020 provides a preference for uses that are unique to or dependent upon use of the state's shoreline.

- b. The SMA Guidelines in WAC 173-26-020 and .201(2)(d) provide an explicit hierarchy of preference for uses that are particularly dependent on shoreline location or use in the following:
 - Water dependent uses
 - Water-related uses
 - Water enjoyment uses
 - Non-water-oriented uses
- c. WAC 173-26-241(3)(d) provides that SMPs should prohibit non water-oriented commercial uses on the shoreline unless they meet the following criteria: the use is part of a mixed-use project that includes water-dependent uses and provides a significant public benefit with respect to the SMA's objectives such as providing public access and ecological restoration.

Relevant SMP provisions

- i. 4-3-090.E.3 Use Preference
- ii. 4-3-090.E.9 Standards for Density, Setbacks and Height (specific provisions for uses)

References: Memo November 12, 2009 Overview of Comments Received
Overview Memo of October 9, 2009
Overview Memo of July 22, 2009
Overview Memo of June 15, 2009
October 23, 2008 Tech Memo – Code Overview, Item 1

5. Non-Conforming Development

Relevant SMP provisions:

- i. No net loss – see above
- ii. 4-3-090.F Specific Use Provisions, 7 Piers and Docks, j. repair, replacement or reconstruction of existing docks
- iii. 4-3-090.G.4. Shoreline Stabilization, for existing shoreline stabilization
- iv. 4-10-095 Nonconforming Uses, Activities, Structures and Sites

References: Memo November 12, 2009 Overview of Comments Received
Overview Memo of October 9, 2009
October 23, 2008 Tech Memo – Code Overview, Item 6